Supreme Court, U.S.
FILED

(1)

02 1618 MAR 7 - 2003

No.
OFFICE OF THE CLERK

In the Supreme Court of the United States

LINWOOD E. MOORING,

Petitioner,

V.

EAST CAROLINA UNIVERSITY, et al

Respondent

On Petition for Writ of Certiorari To The Fourth Circuit Court Of Appeals

PETTION FOR A WRIT OF CERTIORARI

Linwood E. Mooring
1306 Drum Avenue
Greenville, NC 27834
Tel. (252) 757-1568
Fax (252) 757-2898
Pro se Petitioner

Formatted by Mooring House Press 252 757-1568
P. O. Box 1072, Greenville, NC 27835

52 pp

QUESTIONS PRESENTED FOR REVIEW

1. Can a complaint be dismissed when a citizen (a member of a protected class) has clearly alleged violations of 14 Amendment "equal protection rights" and it is obvious that he can prove the allegations that would entitle him relief?

2. Do officials of a state university have immunity when a citizen (a member of a protected class) has clearly alleged that they have violated his 14 Amendment rights?

3. Is a citizen (a member of a protected class) barred by the Eleventh Amendment from suing his own state under Title 42 Section 1983-85 when state officials has been alleged of violating his 14 Amendment, equal protection rights?

4. Can the employees of a corporation conspire among themselves driven by personal reasons or by superceding their authority wherein I can state an actionable claim?

5. Does the Federal Court have Pendant Jurisdiction over state claims that are clearly relevant to a Federal claim, when a citizen has alleged violations of his 14 Amendment Rights?

PARTIES

The following individuals and entity are parties in the court below: East Carolina University, Robbie Hudson, Ernie Marshaburn, Joe Norris, Woody Bolton, Gloria Schwartz, Paula Hutchinson, Roger Nobles, Arthur G. Howell, Jr.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

PARTIES TO THE PROCEEDINGS.....ii

TABLE OF CONTENTS.....iii

TABLE OF AUTHORITIES.....iv

CITATION TO OPINION.....1

JURSIDICTION.....1

CONSTITUTIONAL PROVISISIONS.....1

STATUTORY PROVISIONS.....2

STATEMENT OF CASE.....2

PROCEDURAL HISTORY.....3

A. Proceeding in the District Court.....3

B. Proceeding On Appeal.....5

REASON FOR GRANTING THE WRIT of Certiorari.....5

REVIEW IS WARRANTED BECAUSE THE QUESTIONS PRESENTED ARE OF IMPERATIVE PUBLIC IMPORTANCE, AND REVIEW BY THIS COURT IS ESSENTIAL TO BRING FINALITY TO CONFLICTS BETWEEN THE CIRCUITS, AS WELL AS, TO BRING IN SOME OF THE CIRCUITS THAT MAY HAVE STRAYED FROM SOME EARLIER RULINGS OF THIS COURT TO SUCH A DEGREE THAT TO EVEN GET A

COMPLAINT IN COURT IS ALMOST AN IMPOSSIBLE TASK.....5

ARGUMENT.....6

CONCLUSION.....27

TABLE OF AUTHORITIES

CASE PAGE

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).....App. 15B

Aumiller v. University of Delaware, 434 F. Supp. 1273, 1306 (D. Del. 1977.....App. 17

Bennett v. Berg, 685 F.2d 1053, 1058-59 (8th Cir. 1983).....App. 14

Bramlet v. Wilson, 495 F.2d 714, 717 (8th Cir.1974).....App. 14

Brown v. Bryan County, 67 F.3d 1174, 1181 n.14 (5th Cir. 1995).....ftn2,8

Boddie v. Columbus, 989 F.2d 745, 748 (5th Cir. 1993.....App. 19

Bushi v. Kirven, 775 F.2d 1240, 1252 (4th 1985).....23

Carnegie-Mellon Univ. v. Cohill 484 U.S. 343, 350(1988).....App. 17B

Click v. Copeland, 970 F.2d 106, 109 (5th Cir. 1992).....App. 19

TABLE OF AUTHORITIES -continued

CASE PAGE

Cole v. University of Hartford, 391 F. Supp. 888, 893 (D.Conn. 1975).....App. 18

Conley v. Gibson, 355 U.S. 41, 45-46 (1957) ....App. 14

Edelman v. Jordan.....19

Ex parte Young, 209 U.S. 123 (1908).....15

Ferri v. Ackerman, 44 U.S. 193 (1979).....12

Fitzpatrick v. Bitzer, 427 U.S. 445, 96 S. Ct. 2666, 49 L. Ed. 2d 614 (1976).....21

Thomas W. Garland, Inc. v. City of St. Louis, 596 F.2d 784, 787 (8th Cir.), cert. denied, ...App. 14

Gay Student Services v. Texas A&M [**19] University, 612 F.2d 160 (5th Cir.), cert. denied, 449 U.S. 1034, 66 L. Ed. 2d 495, 101 S. Ct. 608 (1980.....App. 14

Gibb v. Scott, 958 F.2d 814, 816 (8th Cir. 1992).....App. 14

Hampton V. Hanrahan, 800 F.2d 600, 620-232 (7th Cir. 1979), cert. denied, 446 U.S. 754 (1980).....ftn4,25

Hodgin v. Jefferson, 447 F. Supp. 804, 807 (D.Md. 1978).....App. 18

Interstate Bankers Corporation v. Kennedy, D. C. Mun. App.,33 A.2d 165, 166.....App. 14

Jones v. Clinton.....19

International Society for Krishna Consciousness, Inc. v. Colorado State Fair & Industrial Exposition Commission, 673 P.2d 368 (Colo. 1983).....ftn3, 9

Jacobs v. College of William And Mary.....20

TABLE OF AUTHORITIES -continued

CASE PAGE

Johnson v. San Jacinto Jr. College, 498 F. Supp. 555 (D. Tex. 1980.....App. 17

Lampkin, 7 F.3d at 434-36.....ftn2,8

Lynch v. Cannatella, 810 F.2d 1363, 1371 (5th Cir. 1987); App.19

Mangieri, 29 F.3d at 1017-18.....ftn2, 8

Maxey v. Smith.....7,13

Mershon v. Beasley, 994, 451 (8th Cir. 1993).....ftn4, 25

Monell v. Department of Social Services, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978).....App.16, 19

Morrison v. Jones, 607 F.2d 1269 (9th Cir. 1979), cert. denied, 445 U.S. 962, 64 L. Ed. 2d 237, 100 S. Ct. 1648 (1980).....ftn3, 9

Morton v. Becker, 793 F.2d 185,187 (8th Cir.1986); accord Conley v. Gibson, 355 U.S. 41, 45-46 (1957).....App. 14

Mylan Lab. Inc. v. Matari, 7 F.3d 1130 (4th Cir. 1983..... 7

Nixon v. Fitzgerald.....11

Parratt v. Taylor, 451 U.S. 527, 68 L. Ed. 2d 420, 101 S. Ct. 1908 (1981).....ftn3, 8

Picking v. Penn Railway, 151 F2d 240.....App. 15

TABLE OF AUTHORITIES -continued

CASE PAGE

Rushy v Wayne Co, (476 Mich 247, 259; 462 NW2d.23 (1990).....17

Scheuer, Administratrix v. Rhodes, Governor of Ohio, ET AL.....20

Schwab v. Erie Lackawanna R...Co., D.C.Pa., 303 F. Supp.1389, 1399.....App. 17B

Siegert v. Gilley, 500 U.S. 226, 231, 111 S. Ct. 1789, 1793, 114 L. Ed. 2d 277 (1992).....App.19

Silver v. H&R Block. Inc.,105 F.3d 394,397 (8th Cir.1997).....App. 14

Thomkins, 26 F.3d 605, 606.....App. 19

Travis v. Gary Community Mental Health Ctr., Inc., 921 F.2d 108 110 (7th Cir. 1990).....23

United Mine Workers v. Gibbs, 383 U.S. 715(1966).....App. 17B

United States v. Mississippi, 380 U.S. 128, 143, 85 S. Ct. 808, 816, 13 L.Ed.2d 717, (1965).....App. 14

Universal Amusement Co., Inc. v. Hofheinz, 646 F.2d 996, 997 (5th Cir. 1981).....App. 19

U.S. Constitution Eleventh Amendment: Annotation (p3.....14, 19

TABLE OF AUTHORITIES -continued

CASE PAGE
Victorija Smith, Appellant, v. St. Louis University.....App. 17

Walsh v. Louisiana High School Athletic Association, 616 F.2d 152 (5th Cir. 1980).....App. 16

Weisbord v. Michigan State University, 495 F. Supp. 1347 (D. Mich. 1980.....App. 16

Will V. Michigan State Police, 491 U.S. 58, 66-67 (1989).....App. 21

Other Authorities:

28 U.S.C. Section 1254(1).....1

28 U.S.C. Section1291.....1

28 U.S.C. Section 1331, 1337.....1

42 U.S.C. Section 1983.....2

42 U.S.C. Section 1985.....2

Rule 8(F) FRCP.....App. 14

Fourteenth Amendment.....1

Eleventh Amendment (Suits Against States).....19

(FindLaw: U. S. Constitution) Annotations p. 3

Aside from suits against States by the United States and by other States, there are permissible suits by individuals against States upon federal constitutional and statutory grounds and indeed upon grounds expressly covered by the Eleventh Amendment in somewhat fewer circumstances.....

CITATION TO OPINION

The Forth Circuit Courts of Appeal ordered that its opinion not be published. The style of the case was Mooring v. East Carolina University, et al, No. 02 - 1911, (December 19, 2002). The opinion is reproduced in the Appendix. The District Court's order dismissing Petitioner's case is also reproduced there.

JURUISDICTION

The judgment of the district court was entered on August 6, 2002 dismissing Petitioners case before the defendants had answered or any evidence had been recorded in the court records. A timely Notice of Appeal to the United States Court of Appeals for the Fourth Circuit was filed on August 25, 2002. The Court of Appeals affirmed the district court order dismissing Petitioner case on December 19, 2002.

The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1) (which provides that this Court may exercise certiorari jurisdiction " before or after rendition of judgment or decree" by a federal court of Appeals. Jurisdiction basis for the Fourth Circuit is 28 U.S.C. 1291, and for the District Court is 28 U. S. C. 1331 and 1337.

CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment provides that no state....."shall..... deny to any person within its jurisdiction the equal protection of the laws."

---

1. Footnotes are in the format of "ftn , page number. Appendix are formatted "App." and para. (pragraph number), appendix 15-49 are in a separate book.

STATUTORY PROVISIONS

Title 42, Section 1983 states that Every *person* who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Title 42, Section 1985 states that If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws,.....

STATEMENT OF THE CASE

Petitioner, a black male and Vietnam Veteran, was hired at East Carolina University (hereinafter, ECU) in February of 1984 in the Computing and Information Center (hereinafter, "ITCS"). I have three Associate of Applied Science degrees that I had when I started: **(App. 47-49)** Computer Programming, Business Administration, and Industrial Management Technology. I did my on-job-training at ECU and was hired as a computer Operator II before finishing the course. During that time promotions were handled based on seniority, wherein the most senior operator knew when he would be promoted to work on 1 of 3 teams: computer programming team, production control team or communication team. Therefore, for

about three years after I was hired, I didn't apply for other positions, out of respect for the promotional system that was already in place, even though I was qualified to work on any of the aforementioned teams.

By the time I decided to start applying for other positions, the rules for getting promotions had changed. It was no longer based on seniority, but the directors and managers started requiring other criteria to make it harder for minorities to get the opened positions. At that time, Petitioner and a few other minority operators were some of the most educated and most senior operators. Unfortunately for us, the directors and managers in our department used every means possible to stop us from being promoted.

To make a long story short, when I did start applying for positions, my qualifications were never good enough to get me a promotion, even though I was more qualified for the open positions than most of the employees who were hired. In fact, although other operators were allowed to train in other jobs to help them prepare for promotions, I was denied that opportunity. I was denied many times the opportunity to be reclassified when North Carolina State Personnel made provisions for all operators to advance. **(App. 43)** I have applied for over 30 jobs during my stay at ECU, which does not include the numerous opportunities for reclassifications and upgrades. I was wantonly, willingly and intentionally denied advancement, in any way, for over 19 years

PROCEDURAL HISORY

A. Proceeding in the District Court.

On 16 April, 2002, Petitioner, filed a complaint against defendants ECU, sued as a person, directors, managers, and supervisors sued in their official capacities. I was forced to file this lawsuit when defendants Howell, Nobles and Bolton, who were relevant to my being held back all those years, conspired to have me terminated for no apparently reason other than the fact that Howell was trying to

make a name for himself. It appears that Howell thought that by having me fired the operators and other state employees would fear him, which would empower him to control them anyway he wanted to. Most of the other operators knew that he was trying to have me fired, and that the officials at ECU were doing nothing to stop him. Therefore, I was left with no choice but to file a lawsuit to prevent Howell from having me terminated.

On or about 24 April, 2002, I served all defendants by depositing a copy of my complaint and a summon in the U.S. Mail, postage paid. I hand-delivered all return receipts to the clerk and had them filed on 6 May, 2002. On or about 13 May, 2002, defendants requested an extension of time to respond to my complaint that was granted, giving the defendants a 4 June, 2002 deadline. On or about May 21, 2002, I received a letter from the defendant's attorney letting me know that they had filed a Motion To Dismiss my complaint pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(2) and 12(b)(6). The Motion was filed on or about May 22, 2002.

Petitioner received another letter from the clerk of the court on 26 May, 2002 alerting me that I had 20 days (11 June, 2002) to serve my response to Defendants' Motion to Dismiss. Since there were so many issues to be addressed I filed a motion to extend the time in which to respond to defendants Motion to Dismiss and the court ordered that I had until 25 June, 2002. On 11 June, 2002 I file a request for Leave of court to be allowed to exceed 30 pages to respond to defendants Motion to Dismiss and it was granted on June 19, 2002. I filed a timely opposition to defendants Motion to Dismiss on June 25, 2002. Defendants' attorney sent me a timely reply brief on or about July 11, 2002. On August 6, 2002 the District Court sent its Order **(App. 3-12)**, which dismissed my case on all counts without the defendants having to answer or any other information in the court records.

After my careful examination of the information sent to me letting me know the judgment of Judge Malcolm, I noticed that the information indicated that their was a hearing or a trail in which Judge Malcolm based his decision on to dismiss my case. **(App. 12B)** This I found to be puzzling, for I have not been in either a trial or a hearing since this case started. Moreover, if there was a trial or a hearing, who stood in to represent the plaintiff? How could there be a trial or hearing without me to speak on my own behalf in the proceedings? I would like to bring to the attention of this Court that I am representing myself, and it should be recorded that I have not been in a trial or hearing involving this matter. In fact I haven't talked to any attorney about this matter.

B. Proceeding in the Appellate Court

On August 9, 2002, Petitioner filed a timely Notice of Appeal and sent a copy to defendants' attorney. **(App. 13)** On or about August 22, 2002 I received information from the clerk of the Fourth Circuit with instructions as to how to format my informal brief. I was ordered to file my appeal no later than September 16, 2002. I filed a timely informal brief. On or about September 16, 2002, defendant filed a timely reply to my appeal. On December 19, 2002, I received a letter from the Fourth Circuit Appeals Court, affirming the decision of the Federal District Court for the Eastern District of North Carolina at Greenville by unpublished per curiam opinion (App. 1,2) without the defendants having to even answer and this is where the matter stands now.

REASON FOR GRANTING THIS WRIT OF CERTIORARI

Review is warranted because the questions presented are of imperative public importance, and review by this court is essential to bring finality to conflicts between the circuits, as well as, to bring in some of the circuits that may have strayed from some earlier

rulings of this court to such a degree that to even get a complaint in court is almost an impossible task.

ARGUMENT

QUESTION 1

Can a complaint be dismissed when a citizen (a member of a protected class) has clearly alleged violations of 14 Amendment "equal protection rights" and it is obvious that the citizen can prove the allegations?

The Dcourt acted prematurely when it dismissed my case because a lawsuit should not be dismissed when a citizen has alleged a claim that must be held as being true. A lawsuit should not be dismissed when it is obvious that the plaintiff can prove the allegations. My complaint was over 30 pages long, with a statement of fact that must be held as true that is about 20 pages long, that includes names and dates of alleged incidents, detailing the deprivations of rights and loss of property that I suffered, as well as, other state employees from 1992-2002. It is obvious that out of 20 pages of allegations there are many genuine issues of material facts that should have stopped a dismissal of my lawsuit. **(App. 15B)**

Furthermore, I want to bring to the attention of this Court the Standard Of Review that is accepted by most, if not all, federal circuits when considering a Motion to Dismiss that reflects my belief that my complaint should not have been dismissed. This Standard Of Review should have been the guide the Dcourt used to determine whether or not a Motion to Dismiss should be granted. **(App. 14-15)**

Also cited below is a portion of the information the Dcourt used to support its decision that was taken from the Court's Discussion in the Dcourt's Order filed August 6, 2002. Pay attention to the way the court has not followed its own Standard Of Review that clearly points out that my complaint should never have been dismissed. **(App. 5, para. 2)**

> After accepting all well pleaded allegations in the plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the Plaintiff favor, motion to dismiss are granted only where the plaintiff can prove no set of facts which would entitle him to relief. (Mylan Lab. Inc. v. Matari, 7 F.3d 1130 (4th Cir. 1983)

The Dcourt use the citing above to set the standard as to how my complaint should have been handled in that all the allegations that I have alleged should have been accepted as true and all reasonable factual inferences from those facts should have been in my favor. It is obvious that the Dcourt has taken nothing that I have alleged as true and no inferences were in my favor. This is clearly ignoring the cited information the court used to support it own Order. The Dcourt should have believed that the defendants had done everything that I have alleged.

Consider the case Maxey v. Smith in the Fifth Circuit, wherein the Court of Appeals followed the guideline of the Standard of Review. The Fifth Circuit Court of Appeals handled a motion to dismiss completely different from the Forth Circuit. It clearly stated that it believed the allegations of the plaintiff. This cannot be stated when considering how the Fourth Circuit handled my case, for it is clear that the Dcourt didn't believe any of my allegations.2

Then the abovementioned citing goes on to say that a motion to dismiss is granted only where the plaintiff can prove no set of facts that would entitle him to relief. Again the Dcourt has ignored the

---

2.("Factual allegations are examined to determine whether they would be sufficient, if proven, to establish a violation of clearly established law."). In its most basic terms, this court must 1) assume that the official committed the acts of which the plaintiff complains, 2) determine what relevant facts and circumstances surrounded the action, including what facts the official was aware of or should have been aware of when taking the alleged action, and 3) objectively determine as a matter of law whether a

reasonable official in the defendants' [*9] position would have believed that he was violating clearly established constitutional rights by taking such action. Only the second of these inquiries has the potential to raise genuine issues of material fact, and only the presence of such issues would allow the submission of the immunity question to the finder of fact. Brown v. Bryan County, 67 F.3d 1174, 1181 n.14 (5th Cir. 1995); Mangieri, 29 F.3d at 1017-18; Lampkin, 7 F.3d at 434-36.

---

information that it has cited, in that it is clear that I can prove the facts that I have alleged. This Court only has to consider the fact that I have not been allowed to advance, in any way, in over 19 years to clearly see that the slightest inference would be in my favor that I have been deprived of my 14 Amendment equal protection rights. This can be further established when this Court consider that the state of North Carolina has made provisions to reclassify all operators numerous time since I was hired at ECU. **(App.43)** This clearly shows that there are genuine issues of material fact at issue and this case should have never been dismissed.

I would like to remind this Court that all I must alleged to state a claim under Title 42 section 1983 is that some person, acting under colors of law, deprived me of a right, a privilege or an immunity secured by the federal constitution.3

Therefore, the Dcourt and Apcourt acted prematurely when they dismissed my claims insinuating that I suffered no deprivation of right or loss in property. I have properly alleged that for years ECU's officials willingly and intentionally deprived me, as well as, other minorities of our equal protection rights. These allegations must be held as true until proven differently in a court of law. Furthermore,

---

3. To state a claim for relief under § 1983, the claimant need allege only (1) that some person deprived the complainant of a right, privilege, or immunity secured by the federal constitution; and (2) that such person acted under color of state law. *Parratt v. Taylor,*

451 U.S. 527, 68 L. Ed. 2d 420, 101 S. Ct. 1908 (1981); International Society for Krishna Consciousness, *Inc. v. Colorado State Fair & Industrial Exposition Commission*, 673 P.2d 368 (Colo. 1983). It is also well settled that complaints filed under the Civil Rights Act are to be construed liberally.*Krishna Consciousness*, 673 P.2d 368; *Morrison v. Jones*, 607 F.2d 1269 (9th Cir. 1979), *cert. denied*, 445 U.S. 962, 64 L. Ed. 2d 237, 100 S. Ct. 1648 (1980).

---

neither the Dcourt nor the Apcourt can say, without a shadow of doubt, that I cannot prove the allegations in my lawsuit. Moreover, it has not been demonstrated that there is no genuine issue of material fact at issue in this matter.

For there is one genuine issue that cannot be disputed that clearly show a deprivation of right and loss of property, and that is that I have never been promoted, upgraded or even reclassified. To be deprived of a reclassification for over 19 years alone is enough to show that I has suffered a loss in property and has been deprived of a right that other employees were allowed to enjoy. This is something that neither defendant nor any other computer operator can say who was hired doing the time that Petitioner was hired, (that he has never been promoted, reclassified, and or upgraded for over 19 years).

This Court should set the record straight for me and other N. C. state employees whose rights will be violated if this Court doesn't act now by sending a clear message that say that my 14th Amendments rights have been violated. There are many other state employees whom I work with and those who have quit their jobs for similar reasons that I have alleged in this matter who will benefit from this Courts action. Only this Court has the power to correct this wrong, and accordingly, for this reason, this Court should grant a Writ of Certiorari.

QUESTION 2

Do the officials of a state university have immunity when a citizen (a member of a protected class) has clearly alleged that they have violated his 14 Amendment rights?

The Dcourt and the Apcourt acted prematurely when they dismissed Petitioner's case on the grounds of absolute state immunity. When I observed the reasons for the Dcourt and Apcourt to dismiss my complaint, I was a bit confused, in that it appears that ECU and its officials enjoy immunity. In fact, a type of absolute immunity. I know that the Dcourt never said that ECU has absolute immunity, but since there was no evidence in the court records, no hearing, no answer from the defendants, no summary judgment and nothing in the Dcourt's records but my complaint (that the Dcourt should have believed), I can only assume the Dcourt did not need to look at any evidence to determined that ECU was qualified for state immunity. The way I interpret this is that, ECU and its officials are absolutely immune from a Title 42 Section 1983 civil rights lawsuit, that cannot be true.

Immunity

When I did my research on immunity I found that there is really no "absolute immunity" at all. For even absolute immunity, which may be enjoyed by our presidents, governors, judges and legislators has conditions that must be met in order for any of them to enjoy it. Consider the Jones v. President Clinton lawsuit (1997), the District Court and the Eighth Circuit Court of Appeals was faced with an immunity issue that involved a sitting President. The President's lawyers tried to get Presidential immunity for him, which is understandable being that he was the sitting president at that time and his focus should have been on the concerns of the country, not a lawsuit. Although President Clinton's lawyers put up a good argument, they could not get the Court to rule in the president's favor and ultimately Presidential immunity

was denied in a summary judgment proceeding. **(App. 20)**

We can see clear reasoning for the Eighth Circuit to deny Clinton Presidential immunity in the citing Nixon v. Fitzgerald, the Court established that there is:

> "no support for immunity for unofficial conduct. Moreover, immunities for act clearly within official capacity are grounded in the nature of the function performed, not the identity of the actor who performed it".

Had state immunity been determined by the identity of the actor, as in my case, the Court could not have denied President Clinton immunity. But since immunity is grounded in the official act and not the identity of the actor and the president had been alleged of violating a citizen's rights, there was no immunity.

To establish that Clinton did not have immunity, the Court looked at the act(s) the President had been alleged to have committed and based its decision on the evidence that was admitted into the Court's records. Both the District Court and the Eighth Circuit Court of Appeals denied Clinton Presidential Immunity, **(App. 20)** showing that even the President of the United States doesn't enjoy immunity when he has been alleged to have violated the rights of a citizen and sued pursuant to Title 42, Section 1983-1985 claims.

The Court went on to explain that the President, like other officials, is subject to the same laws that apply to all citizens, that no case has been found in which an official was granted immunity from suit for his unofficial acts. The Court held that the rationale for official immunity is inappropriate where only personal, private conduct by a president is at issue. Also in **Ferri v. Ackerman, 44 U.S. 193 (1979),** the Court made it clear that the rationale for allowing certain public servants immunity from suits for money damages arising out of their official acts is

inapplicable to unofficial conduct. Petitioner has clearly alleged violations of 14 Amendment rights in this case. Consider Ferri v. Ackerman, 44 U.S. 193 (1979).

> "In cases involving prosecutors, legislators, and judges we have repeatedly explained that the immunity serves the public interest in enabling such officials to perform their designated functions effectively without fear that a particular decision may give rise to personal liability."

We have just read that the reason this Court allows people such as prosecutors, legislators, presidents, judges, etc. immunity is because it serves the public interest. This allow the officers to perform their designated function effectively without fear that a particular decision may rise to personal liability, which is not the case for ECU and its officials. It does not serve the public interest for ECU and its officials to be allowed immunity. In this case immunity is only used as a shield to hide the alleged unlawful deeds of the officials at ECU. There is no decision either of the defendants can make that can effect the public as does a judge, prosecutor, legislators or a president, and it is obvious that the defendants have nothing to fear in their decision making process.

Therefore, the Dcourt and the Apcourt acted prematurely when they dismissed my complaint purely based on the identity of the actors. For as discussed earlier, immunity is grounded in the official act of the actors not the identity of the actors and that there is no immunity for unofficial acts. To willingly and intentionally deprive me of my rights or conspire to deprive me of my rights for over 19 years is a clear violation of well-established federal and state laws and is clearly an unofficial act. I have alleged that ECU officials have deprived me of any promotions, upgrades, reclassifications, interim pay increases and training that have benefited all other operators and other state employees who were hired during the time

I was hired in 1984. **(App. 23-42, Complaint Statement of Fact)** Even the defendants themselves have enjoyed some, if not all, of the above mentioned privileges.

Now I want this Court to consider how the United States District Court for the Northern District of Mississippi, in the Fifth Circuit handled qualified immunity in the Maxey v. Smith case. The Court used a three-pronged inquiry for the determination of qualified immunity: If ECU and its officials have immunity it would be qualified and the Dcourt should have used a guide similar to this one to determine if the official qualified for immunity. **(App. 45-46)**

(1.) if the plaintiff has asserted the violation of a constitutional right at all.

(2.) If the law was clearly established at the time of the official's action;

(3.) And the objective reasonableness of the official's conduct as measured by reference to clearly established law.

It is clear that had the Dcourt or the Apcourt followed the pattern above to determine if the defendants qualified for immunity, they would not have qualified for it. Even using the pattern above, I have alleged the necessary information to establish that the defendants did not qualify for immunity. I have (1.) alleged a violation of a constitutional right, (2.) the law and statutes (title 42 section 1983-85) used in this case are clearly established laws and (3.) the defendant has no logical reason for depriving me of my right to advance for over 19 years.

Also we must not forget that the defendants have not demonstrated that there is an absence of a genuine issue of material fact on the matter. There has been no hearing, summary judgment or even an answer to my complaint to even attempt to demonstrate that there are no genuine issues of material facts at issue. **(App. 15B)**

Arm of a State

Since one of the requirements needed to qualify for state immunity is that the "person or entity" is an "Arm of the state", I am going to discuss it briefly with the intent to show that ECU and its officials is not an "arm of the state" that can qualify for state immunity. The Dcourt erred when it included ECU and it's officials as an "Arm of the State" who can qualify for immunity

The Dcourt relied heavily on the case Huang v. Board of Governors of the University of North Carolina to support its decision to dismiss my case on the ground that a state university is an "arm of a state". When I studied that case, I found nothing relevant to show that the Board of Governors of the University of North Carolina had been clearly established as an arm of the state which was the support the Dcourt used to say that ECU qualified for state immunity because it is an extension of that system. I totally disagree that ECU is an arm of the state, in any way.

Additionally, in the Huang case, Huang conceded and did not challenge the immunity defense of the state and its officials in that matter as I have. Huang conceded and did not challenge the alleged arm of the state status of the university officials. The Court of Appeals had no obligation to challenge that ruling for Huang, therefore the decision of the District Court stood and the Court of Appeals only affirmed the ruling of the lower District Court.

Here is more information from the U.S. Constitution Eleventh Amendment: Annotation (p.3) that will help us to determine what is an arm of the state. It also shows that ECU and its officials is not an arm of the state as the district court has stated:

> "With respect to governmental entities that derive their authority from the State, but are not the State, the Court closely examines state law to determine what the nature of the entity is, whether its an arm of a state or whether it is to be treated like a municipal corporation or

> other political subdivision. An arm of a State has immunity: "agencies exercising state power", have been permitted to invoke the Amendment in order to protect the state treasury from liability that would have had essentially the same particle consequences as a judgment against the state itself.

ECU and its officials are not one of those agencies that "exercise state power". Moreover, even if ECU is considered an arm of the state, being alleged of violating any person rights still put the defendants in a position to have to prove that they have qualified immunity. I want to remind this Court that it is well established law that there is "no absolute immunity" and immunity can only be determined by careful examination of the court's records. There has been no hearing, no summary judgment proceedings, etc., to determine if ECU officials have immunity. In fact, the defendant has not yet answered. So where is the foundation for the defendants being alleged an arm of the state, qualifying for state immunity? In my complaint I have clearly alleged a violation of my 14th Amendment right that prevents the defendants from qualifying for any immunity. **(App. 19)**

Now the Dcourt and the Acourt has allowed the defendants to use the Eleventh amendment as a shield to hide their clearly alleged, unlawful deeds. But clearly both courts have erred, for the defendants have no hiding place in the Eleventh Amendment. Consider this citing:

> Ex parte Young, 209 U.S. 123 (1908), it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law. Ex parte Young teaches that when a state officer act under a state law in a manner volatile of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or

representative character and is subject in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States Constitution".

The Dcourt has shown no relevant information that supports its assertion that ECU is an "arm of the state", which meets the requirements to enjoy qualified immunity as illustrated in Will v. Michigan State Police officer. The state police is an "arm of the state". It was established in that case that a state and its officials were not a "person" for the means of a Title 42 Section 1983 lawsuit. The Dcourt referred to this case many time in its brief, but it failed to state that the case was first dismissed, and later remanded to trial because the state police had qualified immunity and the Court needed evidence to determine if the officer met the requirements to enjoy that immunity. Notice that even after it was determined that the state official was not a "person" for the means of a Section 1983 lawsuit, the Court still had to determine if the officer qualify for immunity. **(App. 21-22)**

In the case mentioned above, one of the state police officers was involved in an auto accident while on duty. It was determined in summary judgment that the officer met the requirement for qualified immunity because the accident happened during the time the officer was performing a task for the state and there was no violation of federal law. In the present matter the directors, managers, and supervisors were doing a task for East Carolina University, but in doing so, they violated clearly established federal law that should have prevented them from qualifying for immunity.

Furthermore, even if ECU and it officials were considered an "arm of the state" , being an arm of the state is not a shield for state officials who have been alleged of violating clearly established federal law and the Constitution of the United States of America.

Therefore, ECU and it officials, even if they were considered an arm of the state, can't use the immunity protection of the Eleventh Amendment. The Dcourt decision to dismiss my case based on no evidence, no hearing and no answer from the defendants should be thoroughly reviewed by this Court to insure justice and a trial for me and other Americans who live under the Fourth Circuit Court of Appeals jurisdiction. Consider this citing: Rushy v Wayne Co, (476 Mich 247, 259; 462 NW2d 23 (1990)

> State law immunities and defenses, whether derived from statues, common law, or state constitution provisions, do not protect person otherwise subject to 1983 liability for violations of federal Constitutional rights

Therefore, the second reason this Court should grant a Writ of Certiorari is to clear up a few misconceptions concerning an "arm of the state" and "immunity". This Court should clear up the myth that immunity is grounded in the identity of the actors as clearly demonstrated in the present case. This Court should make it clear that, as cited earlier, immunity is grounded in the official act and that there is no immunity for unofficial conduct, regardless, as to whom the person may be. This Court should also make it clear that no immunity is absolute and immunity can only be determined by a careful examination of the courts records when a citizen has alleged that his 14th Amendment right has been violated.

Finally, because the Dcourt and Apcourt dismissed my complaint based on immunity that has never been determined this Court should grant this Writ Of Certiorari. For as clearly shown in this brief, there is no foundation for the immunity that ECU and its official have been granted in this matter.

QUESTION 3

Can a citizen (a member of a protected class) sue his own state under Title 42 Section 1983-85 when state

officials have been alleged of violating his 14 Amendment equal protection rights?

I disagree with the District Court and the Fourth Circuit Court of Appeals finding that a citizen cannot sue the state that he is a citizen of. The Dcourt relied on the citing below as a means of supporting its position that a citizen cannot sue his own state:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against any one of the United States by citizens of another state, or by citizen or subjects of any foreign state."

The only thing that we can clearly glean from the aforementioned quote is that a citizen of a state cannot sue another state, (an example, a citizen of North Carolina cannot sue the state of Virginia). The citing said nothing that clearly states that a citizen could not sue his own state, as in the present matter before this Court. Also the Dcourt admitted in its brief that it is not clear, as to whether a citizen of a state can sue his own state and denied me an inference in my favor to say that I can. This is the exact quote, "It is much less clear, however, whether a citizen may sue his own state, and such a suit does not at first glance appear foreclosed by the amendment's language." **(App. 6, para. 1)**

The Dcourt seems to say that there is some hidden language in the citing above that says that a citizen cannot sue his own state. But I do not see it as the Dcourt did and it appears that the Eighth Circuit in the Jones v. Clinton didn't see it as the Dcourt did either. Paula Jones' attorneys were allowed to sue state officials using Title 42 Section 1983 and 1985. **(App. 20)**

There is nothing in that citing that indicates to me that a citizen cannot sue his own state. In this situation the Court should declare that "Congress should make it's intention to do so unmistakably clear in the language of the statute", in other words, if a

citizen can't sue his own state, then Congress should make that fact unquestionably clear.

The Dcourt clearly has only assumed that because a citizen of a state cannot sue another state, he cannot sue his own state either. This uncertainty alone should have declared an inference in my favor, to say that a citizen can sue his own state. The Dcourt has not established that I, a citizen of North Carolina, cannot sue the state of North Carolina. Also, I would like to bring to the attention of this Court that the state of North Carolina is not listed as a defendant in my lawsuit.

The Dcourt also relied on a citing in the case Edelman v. Jordan to support its assumption, and I quote, "Nevertheless, the Supreme Court has consistently interpreted the amendment to bar suits against a state by it own citizens." I am sure that this statement may be true for there are some cases that are barred by the Eleventh Amendment, but citizens are not barred from suing his own state and its officials by the amendment when a violation of a right guaranteed by the United States Constitution has been alleged. Consider the U.S. Constitution: Eleventh Amendment Annotation: p3:

> Aside from suits against States by the United State and by other states, there are permissible suits by individuals against States upon federal constitutional and statutory grounds and indeed upon grounds expressly covered by the Eleventh Amendment in somewhat fewer circumstances.

There are numerous examples of citizens suing states and state officials. Consider again the Jones v. Clinton case, wherein Paula Jones, a citizen of Arkansas, sued a sitting president who was alleged to have made sexual advances on her. Jones attorney sued the President pursuant to Title 42, Section 1983, 1985, the very same constitutional amendment and statutes that I used in this case. **(App. 20)** At the time that Clinton was to have done the act, he was the

governor of Arkansas (an arm of the state), yet his attorneys didn't use the excuse that he could not be sued because he was a governor. Surely, as smart as President Clinton is and the lawyers who defended him, if a citizen could not sue a state and its officials under Title 42 Section 1983, Paula Jones case would have been dismissed because that fact would have come out some where in the case material.

Now the Dcourt and Apcourt have dismissed my case, denying me the opportunity to get even an answer from the defendants after I had met my obligation in this lawsuit by clearly alleging that state official at ECU had violated my 14 Amendment, equal protection right. **(App. 22-42 Complaint, Statement of fact)**

If I can remind this Court that the law and statutes in this case were the same laws and statutes that Paula Jones' attorney used in her lawsuit in the Eighth Circuit to sue our former President Clinton. The Eight Circuit Court of Appeals denied President Clinton presidential immunity and remanded the matter to trial. **(App. 20)** How is it that the same laws and statutes used in the Eighth Circuit in the Jones v. Clinton case has been denied in the Fourth Circuit in my case? I would like to also point out that the decision of the Eight Circuit to deny Clinton immunity was made in Summary Judgment where there were supporting facts from the plaintiff and defendant in the Court's Records. Neither the Fourth Circuit Court of Appeals nor District Court has anything in their records that clearly supports their decision to dismiss my case.

These are a few other cases that involved states and state officials wherein the state was sued. They supports my assertion that a state and state officials can be sued when they have been alleged of violating a citizens rights Scheuer, Administratrix v. Rhodes, Governor of Ohio, ET AL.; Jacobs v. College of William And Mary; Fitzpatrick v. Bitzer, 427 U.S. 445, 96 S.

Ct. 2666, 49 L. Ed. 2d 614 (1976). Consider this U. S. Supreme Court ruling:

> The U. S. Supreme Court ruled in 1976 that States are not shielded from money judgments by the Eleventh Amendment when suit is brought under a civil rights statute enacted by Congress pursuant to its powers under the Fourteenth Amendment, Fitzpatrick v. Bitzer (1976) 427 US 445, 49 Led 2d 614, 96 S Ct 2666.

It appears that the decision of the Fourth Circuit of Appeals in my case has made a ruling that conflict with the aforementioned U. S. Supreme Court ruling, as well as, other Federal Circuits. This Court should set the records straight for me, the Dcourt, the Apcourt and countless other citizens whose cases could be dismissed because it is believed that a citizen cannot sue his own state. Only this Court can correct this error. Therefore accordingly, this is another reason this Court should grant this petition for a Writ Of Certiorari.

QUESTION 4

Can the employees of a corporation conspire among themselves driven by personal reasons or by superceding their authority wherein I can state an actionable claim?

The Dcourt seems to imply that since ECU is somehow not considered a "person" within the meaning of a Title 42 Section 1983 claim, it is not a "person" for the means of my Section 1985 claim. Since it is clearly not established that ECU is not a "person" and I believe that it is, I must hold to my belief and defend my position that ECU is a "person" and that its employees can conspire among themselves. Additionally, I have support in other federal circuits that have held that a state university is a "person" for the means of a Title 42, Section 1983, 85 lawsuits.

The Supreme Court of Colorado has held in the case Uberio v. University of Colorado (a state institution) that a state university is a "person" for the purpose of a Title 42 Section 1983 lawsuit. **(App. 16-17)**. In the present matter, the Apcourt holds that a state university is not a "person" for the purpose of a Title 42 Section 1983 lawsuit clearly showing that there is a conflict in the circuits, as far as, is a state university a "person" for the purpose of Title 42 Section 1983 lawsuit.

Anyway, I have alleged that ECU employees have conspired against me and other state employees for personal reasons and that they willingly exceeded their authority by so doing. Although ECU is a corporation, that according to corporate law employees cannot conspire among themselves, I will establish that when there is an alleged violation of a citizen's constitutional rights the corporate shield can be penetrated wherein justice can prevail. I can show that employees of a corporation can conspire, creating an avenue wherein I can state a claim pursuant to Title 42, Section 1985.

Since the statute in question is rather long that I need in my defense of my position, I am only going to quote the relevant part of the statute to make my point. (Title 42, Section 1985(3)):

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly any person of equal protection of the law.....

It is a well established fact that it takes two or more "persons" to have a conspiracy, which according to corporate law cannot be done when only one corporation and the employees of that corporation is involved. The intracorporate doctrine says that a corporation and its agents cannot conspire with one another because acts of the agents are considered acts of the corporation itself. However, I can show that the employees of a corporation can conspire in

an unlawful way that will open an avenue wherein I can state an actionable claim pursuant to 42 U.S.C. Section 1985. Of course, I do admit that the intracorporate doctrine is true in that normally employees of one corporation cannot conspire among themselves, but like all rules there are always some exceptions.

Exceptions to the Intracorporate Conspiracy Doctrine are needed to prevent abuse of the doctrine, as it has been abused in the present matter. One of the prime reasons for exceptions to this rule is to prevent organizations like the KKK from incorporating and carrying out their unlawful deeds, then hide behind the corporation or form a corporation for the purpose of achieving a forbidden result. Consider what the Court said in the citing below:

> We do not suggest that an agent action within the scope of his authority will always avoid a conspiracy finding. Agents of the Klan certainly could not carry out acts of violence with impunity simply because they were acting under orders from the Grand Dragon. Travis v. Gary Community Mental Health Ctr., Inc., 921 F.2d 108 110 (7th Cir. 1990).

The second recognized exception to the intracorporate conspiracy doctrine is where the alleged conspirators have a personal stake in the decision or have exceeded his or her authority. This exception is relevant to this case. The Fourth Circuit has recognized this exception in Buschi v. Kirven, 775 F.2d 1240, 1252 (4th 1985),

> holding that the intracorporate doctrine is inapplicable where personal, rather than corporate, interests or where the person exceeds his or her authority drives the corporate agents.

Thus, the Court can recognize the intracorporate conspiracy doctrine and still make room for the situations where justice demands that the corporate veil essentially be "pierced", which is

necessary in the present matter before this Court. The defendants in this matter have conspired and manipulated state and federal funds to deprive me and other minorities of promotions, reclassification and upgrades for their own personal gains. In the case, Greenville Publishing Co., Inc. v. Daily Reflector, Inc. 496 F.2d 391, 399 (4th Cir. 1974) the intracoporate doctrine was recognized and adopted by the 4th Circuit. In this case the second recognized exception was used to insure justice in that case. **(App. 18).**

My immediate supervisor defendant Howell, started working for ECU a few months before I did in a position that was many pay grades lower than mine. I started out as a Computer Operator II and I am sure that I helped to train him in some way. Today, he is my supervisor and has always been one level above me holding a position that I should have been promoted to for more than 10 years, while I was denied any advancement at all. Although, Howell has held the same position for many years, he has been given generous bonuses that kept his salary going up, while mine only grew when the state gave cost of living raises. I estimate that although defendant Howell and I have work side by side for almost 20 years, he earn about $10,000.00 to 15,000.00 more a year than I do.

Yet, the Dcourt want this Court to believe that there is no conspiracy. I have clearly alleged that I have been conspired against **(App. 24-26, para. 20.2-21.6; App. 34-35, para. 29-29.7)** and that the conspiracies were for personal reasons, benefiting only the defendants, doing nothing for ECU (the corporation). Surely, this Court must agree that conspiring to deprive any citizen of any type of advancement for over 19 years, while giving themselves generous pay raises has to be an exception to the intracorporate doctrine rule. Furthermore, I have alleged that the managers, supervisors and directors were driven by personal

motives, which is an exception to the intracorporate doctrine that is recognized by the Fourth Circuit Court of Appeal. **(App. 18)**

Not only did they conspire driven by personal reasons, but also the defendants exceeded their authority by making changes in the reclassification process when the State of North Carolina had made provisions for all operators to be reclassified. **(App. 43)** There have been many reclassifications in my department over the years affecting many operators, but of all the reclassifications that have taken place, I have not been reclassified once. It appears that defendants Bolton, Nobles and Howell made sure that the provisions the state had provided for me was given to themselves or other operators. The Defendants have clearly exceeded their authority.

Now, I would like to remind this Court that all I must allege to survive a Motion to Dismiss, as far as, a conspiracy is concerned is that there was a mutual meeting of the minds or that the defendants reached an understanding. **4**

It is clear that there is a great need for this Court to demonstrate its power and authority in this matter. For it is obvious that, as in this case, many other citizens are being denied even a trial by the abuse of the intracorporate doctrine, which was designed to fairly handle the conspiracy elements in a lawsuit. My case alone has demonstrated clearly that this doctrine is being abused and that it is time for this Court to clear up this problem, accordingly, this Court should grant a Writ Of Certiorari in this case.

---

4. To prove the existence of a civil rights conspiracy, a plaintiff need only show that the defendants had a meeting of the minds or reached an understanding. Mershon v. Beasley, 994, 451 (8th Cir. 1993) (to survive a motion to dismiss, a plaintiff must allege only that there was a mutual understanding or a meeting of the minds between the defendants). Moreover, a plaintiff need not prove that every conspirator knew the exact details of the plan, and the question of whether a conspiracy existed should not be taken from the jury where the jury can infer from the circumstances that the defendants had a meeting of the minds or reached

an understanding. Hampton V. Hanrahan, 800 F.2d 600, 620-232 (7th Cir. 1979), cert. denied, 446 U.S. 754 (1980).

QUESTION 5

Does the Federal Court have Pendant Jurisdiction over state claims that are clearly relevant to a Federal claim, when a citizen has alleged violation of his 14 Amendment Rights?

The Dcourt stated that my state claims "Intentional Inflictions of emotional distress" and "Defamation" are barred by the Eleventh Amendment and again I disagree. Since it has been clearly established earlier in this petition that the Eleventh Amendment does not shield states and state officials from suit when they have been alleged of violating the rights of any citizen, I would like to remind this Court that all that need to be considered is whether the state claims are related to the Federal claims for the Federal court to have jurisdiction.

The state claims alleged in my complaint are directly related to my Federal Claims and are a direct result of my Federal claims. **(App. 36-42, para 30-33.1)** Therefore, the Federal Court can take pendant jurisdiction over my state claims. **(App. 17B)** To really get a clear reason for me to take such extreme steps to fight this lawsuit to this Court, please read the entire text of my statement of fact.

This Court should grant a Writ Of Certiorari to clearly establish that when a state claim is relevant to a Federal claim, the Federal Court can assume pendant jurisdiction over that state claim. Therefore, for the reasons set forth above and the fact that this is a last resort for me and countless thousands of other people to get at least a trial, Petitioner Linwood E. Mooring respectfully prays that this Court grants a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

CONCLUSION

I have used every opportunity possible to point out to this Court that although I am the only petitioner, I am not the only person that needs this Court to act. There are many other N. C. state employees young and old, male and female, black and white and many nationalities who will benefit from this Court's action to grant this Writ Of Certiorari in this matter.

Additionally, it appears that, although ECU has gathered ample evidence through its own internal audits that clearly establish that for years many of the same defendants were committing violations of federal law are being protected by the university. Some of these men have been given other jobs who will probably continue to carry out there unlawful deeds, while maintaining there more than generous salaries. Unfortunately, even though many of the named defendants should have been clearly proven to have violated federal law pursuant to Title VII, other state laws and ECU own internal policies in internal audits, it doesn't appear that ECU is doing anything to set a precedent to say that violations of any state or federal laws will be tolerated at this university.

What makes matters worst, the defendants know from previous experiences in a lawsuit pursuant to Title VII, that the North Carolina State Attorney Generals office will defend them, and more than likely, never even investigate the alleged federal violations to take corrective action to insure that well established law is not further abused. The defendants know that a case like this stand little chance of surviving the Fourth Circuit Court Jurisdiction. They know that the university will look out for them as they did when I sent complaints to EEOC pursuant Title VII and the highly controversial case Hammiel v. ECU (1997). The Hammiel case involved three other minorities in my

department alleging discrimination and other state claims.

All of the named defendants knew or should have known that they were violating clearly established laws because there were numerous times they were confronted with issues involving discrimination, forcing ECU to have to clean up their mess. **(App. 44)** Unfortunately, as soon as the situations were over the defendants were back to business as usual, completely ignoring the law of this great nation. Accordingly, it does not seem that ECU is doing enough to stop its officials from violating clearly established law. This lack of corrective action can only breed more corruption and continued ignoring of federal law.

I do not mean to be petty, but I need for this Court to understand the seriousness of the circumstances I and other ECU employees are facing. This case is much bigger than Linwood Mooring. It has the potential to touch the lives of American all over the Fourth Circuit jurisdiction, as well as, other Federal circuits. To show clear examples, only a few months ago, one of my co-workers (a kind hearted, hard working, white female) was harassed to the point of quitting by some of the named defendants in this case. Shortly, thereafter another white lady quit after being harassed by many of the defendants. Just recently, on or around February 9, 2003 (while I am composing this petition), an older white lady resigned rather suspiciously.

ECU cannot continue to cover for these defendants, who by their very nature and clearly established patterns and practices will continue to violate clearly established state and federal laws. In this matter the defendant, pursuant clearly established law must answer the complaint and show that there are no genuine issues of material facts at issue before this case can be properly dismissed.

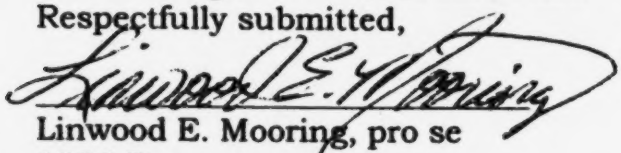
Additionally, The defendants seems to interpret the state Attorney General efforts to protect the

university as an indication that his position is to protect them, as well, and that they can continue to violate federal law. I am sure that this belief is not the position of the Attorney General Office although to the unlearned it may appear that way, since there are clearly alleged violations of a federally protected right involved in this matter. Fortunately, this Court has the power to send a loud and powerful message to all involved parties just by reviewing the judgment of the Fourth Circuit in this matter. This petition has demonstrated that it is time for this Court to act to preserve justice in this country for all American.

Moreover, I am not asking for a hand-out or for the Honorable Justices of this great Court to rule unfairly in my favor, all I am asking of this Court is to review the decision of the Appellate Court. By so doing, a clear and distinguished message will be sent throughout all Court jurisdictions that say that the United States Supreme Court is grounded in justice and that all citizens will be treated fairly, regardless as to, their race, sex, religion, etc. It will send the message that demonstrates that, regardless as to, whether the person is defending himself or has the means to hire a lawyer, every American will be treated fairly in this Court. Moreover, There are genuine issues of material facts still at issues in this matter, that should have prevented the dismissal of my case.

Therefore, for the reasons set forth above and the fact that this is a last resort for me and countless thousands of other people to get at lest a trial, Petitioner, Linwood E. Mooring respectfully prays that this Court grant a writ of certiorari.

Respectfully submitted,



Linwood E. Mooring, pro se
1306 Drum Avenue
Greenville, NC 27834
(252) 757 – 1568

App. 1

IN THE COURT OF APPEALS OF THE
STATE OF NORTH CAROLINA
NO. 02-1911

LINWOOD E. MOORING PLAINTIFF– APPELLANT

VERSUS

EAST CAROLINA UNIVERSITY, ROBBIE HUDSON, , JOE NORRIS, WOODY BOLTON, GLORIA SCHWARTZ, PAULA HUTCHINSON, ROGER NOBLE, AUTHUR T. HOWELL, JR.,

DEFENDANTS – APPELLEES

DATE OF JUDGEMENT:

12 / 19 / 2002

CIRCUIT JUDGES:

HON. LUTTIG, MICHEAL, AND MOTZ

COURT FROM WHICH APPEALED:

FORTH CIRCUIT COURT OF APPEALS

ATTORNEYS FOR APPELLANT:

CELIA GRASTY LATA
THOMAS OREGON LAWTON, III

ATTORNEY FOR APPELLANT:

LINWOOD E. MOORING, PRO SE

NATURE OF THE CASE:

VOLATION OF 14 AMENDMENT RIGHT

Unpublished Opinions are not binding precedent in his circuit. See Local Rule 36(c).

PER CURIAM:

Linwood E. Mooring appeals the district court's order dismissing his civil claims under 42 U.S.C. SECTIONS 1983, 1985, 1986, 1988 (2000), his criminal conspiracy claims under 18 U.S.C. SECTION 241, 242 (2000), and Racketeer Influenced and Corupt Organization Act (RICO) claims under 18 U.S.C. SECTION 1961-1962 (2000). We have reviewed the record and find no reversible error. Accordingly, we affirm on the reasoning of the district court. See Mooring v. East Carolina Univ., CA-02-62-4H(3) (E.D.N.C. Aug. 6, 2002). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

App. 3

IN THE FEDERAL COURT OF THE
EASTERN DISTRICT COURT

NO. 4 : 02 - CV 62 – H3

LINWOOD E. MOORING
Plaintiff

v.

EAST CAROLINA UNIVERSITY, et al
Defendants

Order

Filed Aug 6, 2002

It is Ordered and adjudged defendants' motion to dismiss so granted. Plaintiff shall have and recover nothing of the defendants and the case is closed.

So ordered - s/Malcolm J. Howard, United States District Judge

s/Malcolm J. Howard
United States District Judge

App. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTEERN DISTRICT OF
NORTH CAROLINA
EASTERN DIVISION

NO. 4:02-CV-62-H(3)

LINWOOD E. MOORING)
)
Plaintiff,)
)
v.)
EAST CAROLINA UNIVERSITY)
ET AL)
DEFENDANTS)

This matter is before the court of defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(2), and 12(b)(6). Plaintiff has responded and defendants file a timely reply to that response. This matter is ripe for adjudication.

STATEMENT OF THE CASE

On April 16, 2002, pro se plaintiff Linwood Mooring filed this action alleging various civil rights violations arising out of his employment with East Carolina University ("ECU"). Mooring, an African-American, alleges that ECU and its officials (collectively "defendants") failed to promote him despite his relatively positive employment evaluations. Mooring further alleges that defendants burdened him with work, threatened him with termination, and promoted less qualified white applicants. Mooring asserts federal claims pursuant to 42 U.S.C. SECTION 1983, 1985, 1986, and 1988 (civil rights violations),

18 U.S.C. SECTION 241, 242 (criminal conspiracy), and 18 U.S.C. SECTION 1961-1962 (Racketeering Influenced and Corrupt Organization Act, hereinafter referred to as "RICO"). Mooring also asserts supplemental state claims for intentional inflictions of emotional distress and defamation.

COURT'S DISCUSSION

I. Standard of Review

A federal district court confronted with a motion to dismiss for failure to state a claim should view the allegations of the complaint in the light most favorable to the plaintiff. See Ibarra v. United States, 120 F. 3d 472, 474 (4th Cir. 1997). The intent of Rule 12(b)(6) is to test the sufficiency of a complaint; "importantly, (a Rule 12(b)(6) motion does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." Edward v. City of Goldsboro, 178 F.3d 231, 243 (4th Cir. 1992)). After accepting all well-pleading allegation in the plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff's favor, motions to dismiss are granted only where the plaintiff can prove no set of facts which would entitle him to relief. See Mylan Lab. Inc. v. Matkari, 7 F.3d 1130 (4th Cir. 1983).

II. Eleventh Amendment Immunity

The Eleventh Amendment is perhaps the most curious of all the Constitutional amendments, for it cannot be fully understood by a straight forward perusal of the text. The Eleventh Amendment provides: "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by

citizens or subjects of any foreign state." U.S. Const. Amend. XI. Based on this text, it is clear that a citizen of one state cannot sue another state in federal court. It is much less clear, however, whether a citizen may sue his own state, and such a suit does not at first glance appear foreclosed by the amendment's language. Nevertheless, the Supreme Court has consistently interpreted the amendment to bar suit against a state by its own citizens. Edelman v. Jordan, 415 U.S. 651, 662-63.

The instant case involves just such a suit, as Mooring seeks damages against a North Carolina state entity, ECU and its various employees, for asserted civil rights violations. It is well established that the Eleventh Amendment immunity is not limited to suits against a named state. Rather, it extends to state officials and agents. Indeed, "(t)he immunity conferred by (the Eleventh Amendment) extends not only to the state itself, but it also to suits brought against its officers, agents and representatives where the state, though not named, is the real party in interest and will be affected by any judgment." Jacobs v. College of Williams and Mary, 495 F. Supp. 183, 188 (E.D. Va. 1980). Mooring's complaint names ECU and various RCU employees as defendants, all of whom are sued in their official capacities. Because officials capacity suits against state officials operates as suits against the state itself, Will v. Michigan Department of State Police, 491 U. S. 58, 71, (1989) ("(A) suit against a state official in his or her official capacity is not a suit against the official but rather a suit against the official's office"). Mooring's suit is properly construed as a suit against ECU. Thus, the court must address whether ECU, as a state agency, is protected by the Eleventh Amendment immunity.

An inquiry into whether a state university constitutes an "arm of the state partaking of the State's Eleventh Amendment immunity, "Mt. Healthy City Bd. Of Ed. V. Doyle, 429 U.S. 274, 280 (1977), is informed by several factors, including the nature of the university, its funding sources, state control over the university's operations, and the like. See Jacobs, 495 F. Supp. At 189 (listing the factors considered by courts in determining whether a state university is immunized from private suit by the Eleventh Amendment. After consideration of these and analogous factors, numerous states colleges and universities have been held to enjoy the protection afforded by the Eleventh Amendment. See, e.g., Brennan v. University of Kanasa, 451 F. 2d 1287, 1290 (10th Cir. 1971); Walstad v. University of Minnesota Hosp., 442 F.2d 634, 641-42 (8th Cir. 1971).

In examine the status of ECU vis-à-vis the State of North Carolina, the court is guided by the Fourth Circuit's decision in Huang v. Board of Governors of the University of North Carolina, 902, F.2d 1134 (4th Cir. 1990). In that case, the court considered a suit by a tenured university professor who challenged his transfer to a new university department within North Carolina State University. The court concluded that the university enjoyed Eleventh Amendment protection, reasoning that a North Carolina statute did not act as a waiver of the state's immunity. Id. At 1139-40. Mooring points to no authority indicating that a constituent branch of the University of North Carolina system is not entitled to immunity pursuant to the Eleventh Amendment. Instead, Mooring relies on cases holding that municipalities and local governments are amenable to suit despite the Eleventh Amendment. See, e.g., Department of Social Servs., 436 U.S. 658 (1978).

The fact that municipalities may be sued directly by private parties does not mean that states may be similarly sued. The Supreme Court has made clear that municipalities, unlike states and state agencies, are included as "persons" within the meaning of Section 1983 and may be sued directly by private parties, as long as certain requirements are met. Id. At 690. States, however, are not persons within the meaning of Section 1983 and related statutes, and therefore may not be sued under Section 1983. Will v. Michigan Department of State Police, 491 U.S. 58, 66-67 (1989) (holding that neither states nor its officials acting in their official capacities are person under Section 1983). Mooring seeks money damages against ECU and its officers, even though the Eleventh Amendment's protection against suits by private parties seeking to impose a liability which must be paid from public property or funds....." Jacobs, 495 F. Supp. At 188 (citing Quern v. Jordan, 440 U. S. 332 (1979)). The court finds the Fourth Circuit's analysis in Huang persuasive, and holds that the Eleventh Amendment's protections against suits for money damages against states applies to ECU and its officials acting in their official capacities.

This does not end the analysis, however, because there are circumstances in which the Eleventh Amendment's prohibition on suits against states may be overcome. One way this may happen is by consent, and a state may validly waive its Eleventh Amendment Immunity through statutory or constitutional action. Huang, 902 F.2d at 1138 (noting that a state may waive its protection under the Eleventh Amendment, but that courts may find such a waiver only where stated by express language). Alternatively, Congress may abrogate the Eleventh

Amendment through its power under Section 5 of the Fourteenth Amendment. Will, 491 U.S. at 66 (noting that the Eleventh Amendment provides states immunity from suits for money damages unless a state waives it protection or Congress exercise its "in doubted power under Section 5 of the Fourthteenth Amendment to override that immunity."). For example, when Congress enacted Title VII, it acted pursuant to the express grant of authority embodied in Section 5 of the Fourthteenth Amendment and altered the federal-state balance. Fitzpatrick v. Bitzer, 427 U.S. 445, 456 (1976). In so doing, Congress validly abrogated the Eleventh Amendment for purpose of suits under Title VII. Id. Indeed, it appears that Mooring's claim of racial discrimination in employment is more properly brought under the Title VII scheme. However, Mooring does not rely on Title VII's abrogation of the Eleventh Amendment immunity or refer to any North Carolina statute, which waives the state's immunity. Nevertheless, the court, in construing Mooring's pro se complaint broadly, will examine whether any of Mooring claims are based on statutes that either abrogate immunity or provide an independent state waiver of immunity.

III Statutory Authority

Mooring alleges federal actions pursuant to 42 U.S.C. Section 1983, 1985, and 1988 (civil rights violations), 18 U.S.C. Section 241, 242 (criminal conspiracy), and 18 U.S.C. Section1961-62 ('RICO"). Mooring also alleges North Carolina state law claims for intentional inflictions of emotional distress and defamation. The court will address the federal and state law claims separately.

A. Mooring's Federal Claims

Mooring's reliance on the civil rights statutes is misplaced. "Section 1983 provides a federal forum to

remedy may deprivations of civil liberties, but it does not provide a federal forum for litigants who seek a remedy against a state for alleged deprivation of civil liberties." Will, 491 U.S. at 71. Thus, Mooring cannot maintain an action against ECU under Section 1983.

The same reasoning applies to 42 U.S.C. Section 1985, . 1986. Just as congress did not abrogate Eleventh Amendment immunity in enacting Section 1983, it also did not abrogate the immunity in enacting Section 1985 or Section 1986. Coffin v. South Carolina Dept. of Social Services, 562 F. Supp. 579, 585 (D.S.C. 1983). To suggest otherwise would create a patchwork of protections not justified by the express statutory language. Additionally, if a state and its agencies are not "person" within the meaning of a Section 1983, they also are not "persons" within the meaning of Section 1985 and 1986. Accordingly, Mooring's claims under Section 1985 and 1986 cannot be maintained. Lastly Section 1988 is merely supplemental to Section1983 and 1985, and provides for an award of attorneys' fees to plaintiffs who prevails on their civil rights claims. Since the court has determined that plaintiff's substantive Section 1983 and 1985 claims must be dismissed, his Section 1988 claims must be dismissed also. See Boling v. National Zinc Co., 435 F. Supp. 18, 23 (N.D. Okla. 1976).

Mooring's criminal conspiracy claims fare no better. Mooring's complaint doesn't allege facts suggesting any criminal conspiracy against him. Perhaps anticipating this, Mooring's response to defendants' motion to dismiss does not address the criminal conspiracy counts, suggesting he may have conceded they lack merit. In any case, it is well settled that 18 U.S.C. Section 241, 242 do not create a

private cause of action. Cok v. Consentino 876 F 2d 1, 2 (1st Cir.1989). Stated simply, because these statutes do not give rise to civil claims for damages, Mooring's claims under 18 U.S.C. Section 241, 242 must be DISMISSED.

Finally, Mooring's RICO claim must also be dismissed. A RICO claim, pursuant to 18 U.S.C. Section U.S.C. Section 1962, may be asserted only if a plaintiff can show, inter alia, that "each "RICO" defendant conducted an enterprise through a pattern of racketeering behavior." Palmetto State Med. Ctr. v. Operations lifeline, 117 F 3rd 142, 148 (4th Cir. 1997). Even the most forgiving reading of Mooring's complaint reveals that he has failed to allege any pattern of racketeering on behalf of ECU and its employees. In his complaint, Mooring alleges a cause of action for employment discrimination, but never alleges any facts indicative of a conspiracy or concerted racketeering activity. Accordingly, his RICO claims must also be DISMISSED.

B. Mooring's State Claims

Finally, Moorings raises North Carolina state law claims for intentional infliction of emotional distress and defamation. Absent waiver, federal courts are barred by the Eleventh Amendment from considering claims that state officials violated state law. Pennhurst v. Halderman, 465 U.S. 89, 121 (1984) (noting that a "federal court must examine each claim in a case to see if the court's jurisdiction over that claim is barred by the "Eleventh Amendment" and concluding that "a claim that state officials violated state law a-in carrying out their official responsibilities is a claim against a State that is protected by the Eleventh Ammendment"). Mooring has not argued that North Carolina has waived its Eleventh Amendment immunity for claims of intentional

inflictions of emotional distress and dafamation. In fact, Mazzuco v. North Carolina Board of Medical Examiners, 31 N.C. App. 47, 49, 228 S. E. 2d 529, 531 (1976) (explaining that North Carolina has not waived its sovereign immunity from suit on claims of slander and libel).. Accordingly, Mooring's state claims must be DISNISSED.

CONCLUSION

For the forgoing reasons, defendants' motion to dismiss is GRANTED in all respects. The clerk is directed to close this case.

This 6th day of August, 2002.

s/Malcolm J. Howard
Malcolm J. Howard
United States District Judge

At Greenville, NC
5

I certify the forgoing to be true and correct copy of the original.
David W. Daniel, Clerk
United States District Court
Eastern District of North Carolina
s/Lisa W. Lee
Deputy Clerk

Linwood E. Mooring Jr., Propria Persona
1306 Drum Avenue
Greenville, North Carolina 28734
(919) 757 - 1568

App. 12B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NORTH CAROLINA

LINWOOD MOORING JUDGMENT IN A CIVIL CASE

Plaintiff

Case no: 4:02-CV-62-H3

v.

EAST CAROLINA UNIVERSITY, et al

Defendants.

_____ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered it verdict.

X

_____ Decision by Court. This action came to trail or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED defendant's motion to dismiss is granted. Plaintiff shall have and recover nothing of the defendants and this case is closed.

SO ORDERED – s/Malcolm J. Howard, United States District Judge.

This Judgment filed and entered on August 6, 2002 and copied mailed to:

Linwood E. Mooring Pro Se
1306 Drum Avenue
Greenville, NC 27834

Thomas O. Lawton, III
NC Dept. of Justice
P.O. Box 629
Raleigh, NC 27602

August 6, 2000 David W. Daniel

s/Lisa W. Lee

App. 13

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

Linwood E. Mooring	) Civil Action No.
	) 4:02-CV-62-H3
	)
	) Notice of Appeal
Plaintiff / injured party	)
	)
vs	)
East Carolina University,	)
et al	)
Defendants	)

Notice is hereby given that Linwood E. Mooring, plaintiff above named, hereby appeals to the United States Court of Appeals for the Fourth Circuit from the Order (Motion to Dismiss) entered in this action on the 6th day of August, 2002.

s/Linwood E. Mooring
Plaintiff, pro se
1306 Drum Avenue
Greenville, N. C. 27834

3 "[A] motion to dismiss a complaint should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief. **Thomas W. Garland, Inc. v. City of St. Louis, 596 F.2d 784, 787 (8th Cir.), cert. denied, 444 U.S. 899, 100 S. Ct. 208, 62 L.Ed.2d 135 (1979).** We must take the well-pleaded allegations of the complaint as true, and construe the complaint, and all reasonable inferences arising there from, most favorably to the pleader. **United States v. Mississippi, 380 U.S. 128, 143, 85 S. Ct. 808, 816, 13 L.Ed.2d 717 (1965); see also Bennett v. Berg, 685 F.2d 1053, 1058-59 (8th Cir. 1983); Bramlet v. Wilson, 495 F.2d 714, 717 (8th Cir.1974). " Morton v. Becker, 793 F.2d 185,187 (8th Cir.1986); accord Conley v. Gibson, 355 U.S. 41, 45-46 (1957).** In considering a motion to dismiss, courts accept a plaintiff s factual allegations as true, but reject conclusionary allegations of law and unwarranted inferences. **Silver v. H&R Block. Inc.,105 F.3d 394,397 (8th Cir.1997).** The Court may not consider materials outside the pleadings on a motion to dismiss. **Gibb v. Scott, 958 F.2d 814, 816 (8th Cir. 1992).** The court also cited **Rule 8(f) FRCP**, which holds that all pleadings shall be construed to do "substantial justice". Justice administered according to the rules of substantive law, not withstanding errors, of procedures. **Interstate Bankers Corporation v. Kennedy, D. C. Mun. App., 33 A.2d 165, 166.**It could also be argued that to dismiss a civil rights action or other lawsuit in which a serious factual pattern or allegation of a cause of action has been made would it self be volatile of procedural due process as it would deprive a pro-se litigant of equal protection of the law visa vis a party who is presented by counsel. If your pleadings are not perfect, don't panic. Federal Judges have set forth a doctrine that instructs courts